IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 350 OF 2004

Totty D. Dhunjibhoy .. Appellant
V/s.
Income Tax Officer,
Ward-1(5), Pune .. Respondent

Mr. J.P. Mistry with Mr. A.K. Jasani for the Appellant
Mr. R.V. Desai with Ms. S.V. Bharucha for the Respondent

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 07.02.2005

P.C.:-

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondent. We have perused the judgment and order passed by the Income Tax Appellate Tribunal dated 29.8.2003.

2. The main contention of the learned counsel for the Appellant is that the learned Tribunal has strongly relied on judgment of the Tribunal in **Shri Shevantibhai C. Mehta v. ITO,** which judgment was delivered by the said Tribunal on 28.8.2003 in Appeal No. ITA/1300/PN/2000. The contention of the learned counsel for the Appellant is that the Tribunal heard the matter finally and had placed the matter for order on 29.7.2003. After 29.7.2003, no hearing whatsoever was given neither to the Appellant nor to the Respondent. Therefore, Shri Mistry, the learned counsel for the Appellant contends that the strong reliance by the learned Tribunal on **Shri Shevantibhai C. Mehta v. ITO** would be inapplicable in the sense the Petitioner’s case totally differs from the

same and the terms and conditions of the partnership deed are also different and in any event, no hearing was given to deal with the said case, before the Tribunal which had strongly relied on it's own aforesaid judgment.

3. Having regard to the facts and circumstances of the case, specially in view of the above contention that the Appellant was not given a fair opportunity to deal with the said judgment in **Shri Shevantibhai C. Mehta v. ITO**, we quash and set aside the impugned order dated 29.8.2003 and remand back the same, to the Income Tax Appellate Tribunal, Pune Bench, Pune, to hear the matter afresh, as expeditiously as possible, strictly on it's own merits and in accordance with law. All issues are specifically kept open to be argued afresh. Rule is made absolute in the above terms.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)